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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 16 2009

SRC 07 800 21871

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further consideration. The director subsequently approved the petition and certified the decision to the AAO for review. The AAO will affirm the certified approval of the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at the Children's Nutrition Research Center at Baylor College of Medicine (BCM), Houston, Texas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner failed to submit supporting documentation within seven days of electronically filing the petition, as required by the instructions to the petition, and denied the petition for that reason on December 20, 2007.

The AAO remanded the matter on September 26, 2008, based on evidence showing that the petitioner had in fact submitted the required evidence within the required period. The director subsequently adjudicated the petition on its merits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The petitioner's initial submission lacked this evidence, but the petitioner submitted it after the director issued a request for evidence on October 30, 2008.

Regarding the merits of the petition, the AAO, in its remand order, noted the citations that the petitioner's published work has garnered. The AAO also quoted from some of the witness letters that accompanied the petitioner's first substantive submission. The AAO's discussion of these letters, found in the September 26, 2008 remand order, is incorporated here by reference. The AAO stated:

> The petitioner has shown . . . that his work appears to have attracted significant notice and influenced others in the field. If further adjudication (including a request for such evidence as the director may deem necessary) supports rather than refutes this finding . . . , then approval of the petition would be in order at that time. The record as it now stands, however, does not yet warrant approval of the petition. Therefore, this matter will be remanded. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

In response to the director's October 30, 2008 request for evidence, the petitioner documented 56 citations of his most heavily cited article, indicating substantial interest and impact. The petitioner also submitted additional witness letters, from the BCM faculty and from elsewhere. [redacted] credited the petitioner with "significant contributions to the study of the function of a new longevity gene family: the SIRTs." Prof. [redacted] continued:

> Caloric restriction . . . is the most effective and well-documented way to extend life span and prevent age-related disease. . . . The molecular mechanism of caloric restriction is a mystery. Based on the finding in yeast that caloric restriction extends life span through the Sir2 gene, [the petitioner] tested whether mammalian Sir2 homologues are also mediators of caloric restriction. . . . [The petitioner] is the first researcher to discover that SIRT2 and SIRT3 are induced by caloric restriction in mice. . . . This work was published in *the Journal of Biological Chemistry (JBC)* in 2005 and has been cited 54 times in academic journals.

[redacted] of M.D. Anderson Cancer Center, Houston, Texas, stated:

> SIRT2 deacetylates FOXO3a, which is a key transcription factor that regulates again, metabolism, and anti-cancer responses. . . .
>
> [The petitioner's] work provides the mechanism of regulation of FOXO3a function by SIRT1 and SIRT2, and provides an answer for the contradictory findings of different researchers. More importantly, his results bring up the concept that activating SIRT1 and SIRT2 may have different consequences in healthy people and cancer patients.
>
> FOXO transcription factors are key tumor suppressors in many cancers. . . . As the SIRT activator resveratrol [*sic*; the correct spelling is resveratrol] is enthusiastically advertised as an anti-aging supplement, [the petitioner's] research reminds us to be

> cautious with this kind of drug because of the possible negative effects in some pathological conditions, especially cancer.

[redacted] of Hannover Medical School in Germany stated that the petitioner's "important contributions to the research of SIRTs and his comprehensive understanding of SIRTs' function have already raised him to the top of SIRTs' research."

In a notice dated December 11, 2008, the director found that the petitioner had established that "the benefit of the self-petitioner's work is of national importance." The director certified the approval of the petition to the AAO. The AAO concurs with the director's finding. The petitioner has submitted witness letters and strong objective evidence to establish that his work has had, and continues to have, especially significant impact on his field.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will affirm the director's approval of the petition.

**ORDER:** The director's decision of December 11, 2008 is affirmed. The petition is approved.